

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

John R. Heard,)	
)	CASE NO. 5:05 CV 3001
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
The Summit County Sheriff's Department, et)	
al,)	
)	
Defendant(s).)	

The defendants, Summit County, Summit County Sheriff's Department, Drew Alexander, Steven Finical, Barry Davidson, Douglas Edwardson and Joseph Winkler have moved the Court to dismiss a portion of plaintiff's amended complaint for failure to state a claim. The motion is based upon Rule 12(b)(6) of the Ohio Rules of Civil Procedure. (It goes without saying that the Ohio Rules of Civil Procedure do not apply).

The complaint initiating this lawsuit was filed in 2005. Subsequently, the plaintiff filed a second amended complaint and the motion to dismiss is directed to the second amended complaint. The "second amended complaint" would have been better styled as the "amended complaint", but in any event the plaintiff has only filed two complaints, i.e., the complaint and second amended complaint.

The second amended complaint consists of nine counts and each bears a separate title which follow:

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COUNT I

AFFIRMATION ACTS BY THE STATE PLACING PLAINTIFF AT RISK
AND THE FAILURE TO PREVENT AN ATTACK BY OTHER PRE-TRIAL
DETAINEES COGNIZABLE UNDER 42 U.S.C. § 1983 AND THE STATE
CREATED DANGER THEORY

COUNT II

DEFENDANTS DAVIDSON, EDWARDSON AND WINKLER'S
FAILURE TO INTERCEDE ON PLAINTIFF'S BEHALF AND
PREVENT THE VIOLATION OF HIS CONSTITUTIONAL RIGHTS IS
COGNIZABLE UNDER 42 U.S.C. § 1983

COUNT III

THE COUNTY OF SUMMIT AND THE SUMMIT COUNTY
SHERIFF DEPARTMENT'S FAILURE TO INSTRUCT, SUPERVISE,
CONTROL, AND DISCIPLINE ITS COUNTY JAIL OFFICERS IS
CONGNIZABLE UNDER 42 U.S.C. § 1983

COUNT IV

DEFENDANTS DVIDSON, EDWARDSON AND WINKLER'S
CONSPIRACY TO VIOLATE PLAINTIFF'S CIVIL RIGHTS
IS COGNIZABLE UNDER 42 U.S.C. § 1985

COUNT V

SUPERVISORY LIABILITY OF DEFENDNT
DREW ALEXANDER COGNIZABLE UNDER
42 U.S.C. § 1983 AND 42 U.S.C. § 1986

COUNT VI

SUPERVISORY LIABILITY OF DEFENDANT STEVEN W. FINICAL
COGNIZABLE UNDER 42 U.S.C. § 1983 AND 42 U.S.C. § 1986

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PENDENT STATE LAW CLAIMS

COUNT VII

DEFENDANTS ALEXANDER, AND FINICIAL'S NEGLIGENT FAILURE TO CONTROL UNRULY PRETRIAL DETAINEES, OR TO PREVENT INTIMIDATION OF OR PHYSICAL HARM TO A PRE-TRIAL DETAINEE BY ANOTHER, AND FAILURE TO OBSERVE LAWFUL AND REASONABLE REGULATION FOR THE MANAGEMENT OF THE DETENTION FACILITY IS COGNIZABLE UNDER OHIO LAW R.C. § 2921.44(c)(3).(5) & (E)

COUNT VIII

DEFENDANTS DAVIDSON, EDWARDSON AND WINKLER'S NEGLIGENCE FAILURE TO CONTROL UNRULY PRETRIAL DETAINEES, OR TO PREVENT INTIMIDATION OF OR PHYSICAL HARM TO A PRE-TRIAL DETAINEE BY ANOTHER, AND FAILURE TO OBSERVE LAWFUL AND REASONABLE REGULATION FOR THE MANAGEMENT OF THE DETENTION FACILITY IS COGNIZABLE UNDER OHIO LAW R.C. § 2921.44(C)(3).(5) & (E)

COUNT IX

THE TORT OF ASSUALT AND BATTER UNDER THE LAW OF OHIO BY DEFENDANTS RAY, BROWN, NESBY AND BARNES

The motion as it relates to Count I, assuming the truth of the matters pled, is without merit and is DENIED.

The motion as it relates to Count II and which names only defendants Davidson, Edwards and Winkler is without merit and it is DENIED.

The motion as it relates to Count III is without merit and is DENIED.

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The motion as it relates to Count IV is without merit and is DENIED.

The motion as it relates to Count V is without merit and it is DENIED.

The motion as to Count VI is without merit and it is DENIED.

The defendants' motion asking the Court to decline to exercise supplemental jurisdiction over the plaintiff's state law claims asserted in Count IX is DENIED.

The plaintiff has agreed that the motion to dismiss as to Counts VII and VIII is meritorious and the motion to dismiss Counts VII and VIII is GRANTED.

The motion to dismiss the Summit County Sheriff's Department is well taken and the motion is GRANTED.

IT IS SO ORDERED.

June 14, 2006
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge